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## The Philippines' move away from the International Criminal Court over the war on drugs: A blow for human rights in Asia

HARSH MAHASETH — 13 April, 2018



As a signatory to every human rights treaty and being at the forefront of promoting international human rights, Philippines is considered as one of the “architects” of the United Nations and the human rights system. This was seen as a huge step forward for human rights in Asia. However,

now with the decision to withdraw from the Rome Statute, and the International Criminal Court (ICC), this will be seen as a blow for human rights in the region. The decision to withdraw has been arrived upon by the Philippines President, Rodrigo Duterte, due to the ICC opening up investigations into his and other top officials' crime against humanity during a war on drugs. Several nations and international organizations have criticized this decision and this withdrawal will be seen as a blow for international accountability in the region. To ensure international accountability and a stability in foreign relations the Philippines should remain within the ICC.

### ***The call for withdrawal from the ICC***

In April 2017, Jude Sabio, a Philippines lawyer, delivered a 77-page complaint to the ICC accusing the President and 11 other officials of crimes against humanity. Duterte has been accused of encouraging extrajudicial killings and other gross human rights violations to rid the country of drugs since his election in 2016. He has repeatedly denied the allegations of his crimes that he ordered the police to kill drug suspects and accusations of cover-ups for thousands of deaths in police encounters. According to the Philippines Government, the decision to withdraw was a "*principled stand against those who politicise and weaponize human rights.*" Duterte's spokesperson, Harry Roque, said that the Philippines courts were functioning well and will exercise jurisdiction over any complaints. In a speech Duterte said that since the treaty is not published, it is as if there is no law at all. He also said that the treaty "is not effective nor enforceable in the Philippines". "An international law cannot supplant, prevail or diminish a domestic law," he further added. Duterte has also urged other nations to follow his

move to withdraw. International jurist groups and activists have criticized his attempt to evade justice. Even Philippines politicians have met this announcement with scorn and anger, and a majority of Philippines senators have signed a resolution declaring that the withdrawal is only valid and effective with their consent.

### ***The response of the ICC***

In response to this action the ICC has issued a response. In this statement the President of the ICC's member assembly, O-Gon Kwon, encouraged the Philippines to remain a member and engage in dialogue rather than withdrawing from it. While regretting the actions of Duterte it was also made clear that this would not affect the preliminary examination. The withdrawal takes effect one year after the Secretary-General receives notification. However, the withdrawal from the ICC does not protect any of the individuals in the Philippines from being put on trial. Vitaliano Aguirre II, the secretary of the Department of Justice, and one of the other individuals alleged for crimes against humanity, stepped down from his position. Since his tenure at the Ministry there have been repeated extrajudicial killings which have been unaccounted for, with the Ministry turning a blind eye. This decision to step down does not free Aguirre from his accountability to the ICC. Under Article 127 (2) of the Rome Statute the ICC can step in and exercise jurisdiction even if the State is unable or unwilling to investigate the crimes, and the States have an obligation to continue to cooperate with the Court.

### ***The critical stance of the ASEAN***

The ICC requires strong support from the international community to ensure its effectiveness. The ICC has faced severe criticism from the African Union nations of unfairly targeting them. With the African Union being the largest geographical bloc to have signed the Rome Statute, and several powerful nations such as the United States of America, China, Russia, etc. not even signing the Rome Statute, the ICC's base seems to have been undermined. While the African Union's criticism of the ICC is that there is a bias and an unfair targeting of the African nations, the criticism by the Philippines is that the ICC is being used as a political tool against Philippines.

Philippines is one of the two ASEAN nations that has ratified the Rome Statute, with Cambodia being the other. The reason for this would be that the ASEAN consider non-interference in domestic affairs as the basis of interstate relations. With the ICC having the power to initiate investigations, this undermines the said principle. Due to this and the current Philippines investigation, the ASEAN would be in support of Duterte's decision and back him up. As Philippines has close relations with both the US as well as China, the possibility of the ICC's investigation in Philippines coming to fruition seems doubtful. China has even voiced its support towards the decision taken by Philippines and its withdrawal from the Rome Statute.

The withdrawal could entail negative consequences for the Philippines. This may lead to other nations questioning and doubting the credibility of that nation and any future prospective agreements between them. A country which has a poor track record with human rights and which withdraws from international treaties on the first sight of a negative outcome will not be able to get other countries to invest or

build relations with it. Philippines may have strong relations with the US and China, but disregarding the international organizations and European as well as the other Asian nations that are part of the ICC could prove to be rather harmful for the nation and their foreign relations. Duterte already skipped the ASEAN-Australia Summit and has shown a cold attitude towards the Western nations during the Philippines hosting the ASEAN last year.

The Asian Forum for Human Rights and Development has called upon the international community to intensify the pressure to hold Duterte's administration accountable. With Duterte even threatening to bomb Lumad schools in Mindanao, an additional UN Human Rights Council investigation independent of the ICC investigation should also take place. At this particular moment a push from the international community is what is needed for human rights in Philippines to prevail.

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